

MEMORANDUM OF LAW

DATE: February 5, 1991

TO: Robert Spaulding, Planning Director

FROM: City Attorney

SUBJECT: Tentative and Vesting Tentative Maps -
Regulations to be Applied in the Review
Process

BACKGROUND

It has long been the opinion of this office that all land use permits, both ministerial and discretionary, are reviewed for approval based on the land use rules and regulations in effect at the time of permit approval. If these rules and regulations are changed and are to become effective following application for a permit, the new regulations apply unless the legislative action that changes the regulation provides otherwise by virtue of a pipeline clause or a prevailing state law.

In the case of subdivision maps, state law mandates that approval or disapproval be based on the ordinances, policies and standards in effect on the date the local agency determines the application for a tentative or vesting tentative map is complete. (Emphasis added.) (California Government Code sections 66474.2 and 66498.1.) New or changed ordinances, policies and standards may not be applied unless initiated before the map application was determined to be complete and have become effective prior to approval of the tentative map. (California Government Code section 66474.2(b).)

In earlier memoranda on this subject, we had adopted the position that when a subdivider elected to seek the benefits of a planned development in conjunction with a tentative map or vesting tentative map, the ordinances, policies and standards in effect when the planned development application was approved should apply rather than those in effect when the tentative or vesting tentative map application was accepted as complete. Further study of California Government Code section 66498.1 and

related sections leads us now to conclude that our prior advice to you was questionable as to vesting tentative maps, based on the following analysis.

ANALYSIS

California Government Code section 66498.1(b) provides:

When a local agency approves or
conditionally approves a vesting

tentative map, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards described in Section 66474.2. (Emphasis added.)

It is to be noted that the emphasized phrase does not appear in Section 66474.2 and represents a substantial expansion of the vested rights to include the development of the project, not just the approval of the map.

"Development" is defined in Section 66418.1 as follows:

"Development" means the uses to which the land which is the subject of a map shall be put, the buildings to be constructed on it, and alterations of the land and construction incident thereto."

If it is necessary for an applicant to seek permits in addition to a vesting tentative map in order to proceed with a development, the provisions of Section 66498.1 cited above, would apply to the permits. (Daniel J. Curtin, Subdivision Map Manual, 1990, at page 18.) It would be immaterial whether the applicant elected to seek the permit or the City required the permit. This position is reinforced by the language of Section 66498.1(e) which provides:

Consistent with subdivision (b), an approved or conditionally approved vesting tentative map shall not limit a local agency from imposing reasonable conditions on subsequent required approvals or permits necessary for the development and authorized by the ordinance, policies and standards described in subdivision (b). (Emphasis added.)

The situation is different when considering a tentative map application determined to be complete before January 1, 1989. Prior to January 1, 1989, our view that a tentative map and development permit were to be reviewed based on the ordinances, policies and standards in effect when the permit was approved applied to such projects. However, California Government Code section 66474.3 was added and became effective on January 1, 1989 and provides in subdivision (f) of that section:

An approved or conditionally approved tentative map or vesting tentative map shall not limit a

legislative body from imposing
reasonable conditions on subsequent
required approvals or permits
necessary for the development and
authorized by the ordinances,
policies and standards described in
Section 66474.2 or 66478.1.
(Emphasis added.)

The addition of this subdivision has extended to tentative maps the protection afforded to vesting tentative maps relating to the ordinances, policies and standards to be applied in the review process. However, a tentative map does not enjoy the vesting benefits permitted by Section 66498.1.

In addition, in the case of Santa Clara County Contractors and Homebuilders Association v. City of Santa Clara, 232 Cal. App. 2d 564, 575-76 (1965), the court held that a municipal ordinance is invalid if it imposes a more burdensome condition on a right than that imposed by state law. In the situation addressed by this memorandum, state law has established that the ordinance, policies and standards to be applied in the review process are those applicable at the date of acceptance of the applications. The policy established by our earlier memorandum to apply the ordinances, policies and standards applicable at the time of permit approval of a development is inconsistent with the provisions of Section 66474.2 and 66498.1 and, under the concept in the Santa Clara County case, could be construed as clearly invalid.

In conclusion, it is our view that the ordinances, policies and standards to be utilized in determining whether to approve, conditionally approve or deny a tentative or vesting tentative map and any permits associated with the development must be those in effect when the applications are determined to be complete except for tentative map applications determined to be complete

prior to January 1, 1989. As to those tentative map and permit applications determined to be complete prior to January 1, 1989, the tentative map is to be reviewed in light of the ordinances, policies and standards in effect when the application was determined to be complete, but the permit is to be reviewed in light of the ordinances, policies and standards applicable to the permit in effect when the decision to approve, conditionally approve or deny the permit is made.

JOHN W. WITT, City Attorney

By

Frederick C. Conrad

Chief Deputy City Attorney

FCC:lc:pev:600(x043.2)

ML-91-13